

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE CLERK

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

MOTION OF THE UNITED STATES POSTAL SERVICE  
TO STRIKE PORTIONS OF THE WRITTEN RESPONSE  
OF OFFICE OF THE CONSUMER ADVOCATE WITNESS SMITH  
TO NOTICE OF INQUIRY NO. 4  
(August 22, 2000)

The United States Postal Service hereby moves to strike those portions of OCA witness Smith's written response to Notice of Inquiry (NOI) No. 4 which egregiously exceed the scope of the inquiry initiated by the Commission. NOI No. 4 concerned the mail processing variability models, and invited discussion of issues relating to a carefully-delineated search for the appropriate model specification, based on particular stated hypotheses which could be subjected to statistical testing. In his response, OCA-RT-4, Dr. Smith has barely even paid lip service to issues raised by the NOI, and has instead chosen to raise (or, in many cases, simply address again) unrelated matters of his own choosing. Because the posture of the case is such that the time for Dr. Smith to make such arguments has come and gone, the Postal Service moves to strike those portions of his response that do not directly relate to the family of issues raised by the NOI.<sup>1</sup>

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<sup>1</sup> The NOI was issued by the Commission on August 2, 2000, and called for responses by August 16th, two days after the August 14th date for filing of rebuttal testimony. The Postal Service filed three pieces of rebuttal testimony in the area of mail processing costs on August 14th. The next day, August 15th, the OCA and UPS jointly moved to extend the deadline for filing responses to the NOI until August 25th. Ultimately, a more limited extension was agreed upon, and the deadline was set at August 21st. While the purpose of this extension was ostensibly to allow the parties more time to prepare responses to the NOI, an unavoidable additional effect was to

(continued...)

In his response, after summarizing the NOI, Dr. Smith makes clear early on that he does not intend to discuss the issues raised therein:

For the reasons set forth below, my testimony today does not include statistical analysis of the models presented. I do not discuss the relative merits of Models A and B with respect to each other or the relative merits of the models nested within these two models prescribed by the Commission, except to note that on a theoretical basis neither Model A nor Model B is nested within the other.

OCA-RT-4 at 3. Instead, Dr. Smith espouses the view that all of those issues are irrelevant, because of the deficiencies he claims to have previously identified in Dr. Bozzo's work. *Id.* While Dr. Smith may be entitled to take that view, he is most emphatically not entitled to then set forth the grounds on which he believes Dr. Bozzo's work is defective. To the extent that those grounds have previously been set forth in his direct testimony, their inclusion here would be unduly repetitious, cumulative, and therefore inadmissible. Rule 31(a). To the extent that the grounds set forth have not been previously stated by Dr. Smith, he is unfairly seeking to augment his direct testimony in a manner that eludes timely discovery and rebuttal. To the extent that the Postal Service and other interested parties would need to spend time and effort striving to determine whether each particular criticism is identical with one stated before, or whether it is entirely new or has been substantively modified, such a burden is totally unwarranted under the current circumstances at this stage of the proceedings.<sup>2</sup>

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<sup>1</sup>(...continued)

also give parties five more days to structure their NOI responses in light of the rebuttal testimony filed on August 14th.

<sup>2</sup> It may be noted that Dr. Neels on behalf of UPS also spends a fair portion of his  
(continued...)

To protect its own interests, while nonetheless allowing Dr. Smith his opportunity to express his disdain for the approach set forth in the NOI, the Postal Service moves that the following portions of his response be stricken:

Section III, Parts A - E (Page 2, line 19, through page 7, line 2).

Section V, second paragraph, all but the first and last sentences (Starting with "Correct variables ..." on line 1 of page 8, through "...labor demand." on line 10 of page 8.)

In making this motion, the Postal Service notes that neither Dr. Smith nor the OCA was required to submit testimony in response to the NOI. They could have filed no response. They could have filed a brief response setting forth Dr. Smith's limited views on the specific issues raised. Instead, the OCA apparently chose to use the opportunity to respond to the NOI as a platform to allow Dr. Smith to address unrelated matters. In the context of a submission supposedly responsive to a limited notice of inquiry, this approach is inappropriate, and the Postal Service therefore moves to strike the offending portions of Dr. Smith's NOI response.

THEREFORE, the Postal Service respectfully requests that the above-identified

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<sup>2</sup>(...continued)

NOI response reiterating points that he has made earlier. His presentation contrasts rather starkly with that of Dr. Smith, however, because his claims (whether valid or not) are at least made in the context of the modeling issues contemplated by the NOI. As Dr. Smith does not even go through the pretense of framing his discussion in the terms proposed by the NOI, and, perhaps even more importantly, does not even attempt to provide any new empirical information or testing, there is no justification for nevertheless allowing him to restate his arguments in the absence of any nexus with the NOI issues.

portions of OCA-RT-4 be stricken before the testimony is admitted into evidence.

Respectfully submitted,


UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking



Susan M. Duchek



Eric P. Koetting

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Eric P. Koetting

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